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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/441,936	11/17/1999	GUST H. BARDY	90980054-1	5202
28159	7590	08/23/2005		
PHILIPS MEDICAL SYSTEMS PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3003 22100 BOTHELL EVERETT HIGHWAY BOTHELL, WA 98041-3003			EXAMINER MULLEN, KRISTEN DROESCH	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/441,936

Applicant(s)

BARDY ET AL.

Examiner

Kristen Mullen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 6/13/05 (response).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3,4,6-9 and 13-23 is/are allowed.
- 6) ☒ Claim(s) 1,2,5,10 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/17/99 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (5,269,301) in view of Skelton et al. (6,292,692).

With respect to claim 1, Cohen shows an atrial defibrillator comprising a portable, non-implantable housing; a pair of defibrillator pads operable to be applied to the outside of a patient's body; a shock generator disposed in the housing (16), coupled to the pads (standard skin patches anterior and posterior Col. 4, lines 64-65, see also Fig. 2G of U.S. Pat. No. 4,984,572 which is incorporated by reference and shows standard anterior and posterior skin patches), and operable to shock the patient via the pads (202, 204 of Fig. 2 of U.S. Pat. No. 4,984,572) in response to a shock command from an operator; and an analyzer disposed in the housing and operable to receive a cardiac signal from the patient, to determine from the signal whether the patient is experiencing atrial fibrillation, and to enable the shock generator if the patient is experiencing atrial fibrillation (Fig. 5B, steps 500-502, Fig. 5D steps 553-558, 613-614, Col. 4, lines 34-38, Col. 4, lines 49-54, Col. 7, lines 14-52, Col. 8, line 55-Col. 9, line 17). Although Cohen does not teach an operator verifier, attention is directed to Skelton which teaches a verification device (44) (Col. 6, lines 44-47; Col. 11, lines 1-13). Skelton teaches that the verification device (44) prevents an untrained user to access some of the more advanced

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treatment modules of the defibrillator (Col. 4, line 65-Col. 5, line 5). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include the verification device of Skelton in the atrial defibrillator of Cohen in order to prevent an untrained user to access some of the more advanced treatment modules of the defibrillator.

Regarding claim 2, Cohen shows a control device (8) disposed in the housing.

With respect to claim 5, Cohen shows the analyzer is operable to receive the cardiac signal via the pads (standard skin patches anterior and posterior, Col. 4, lines 64-65). See also Fig. 2G of U.S. Pat. No. 4,984,572 that is incorporated by reference and shows standard anterior and posterior skin patches comprising sensing electrodes (212, 213)).

Regarding claim 10, Cohen further shows the analyzer is operable to determine from the cardiac signal whether the atrial fibrillation terminates after shock delivery (Fig. 5D, steps 555-558).

3. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (5,269,301) in view of Skelton et al. (6,292,692) and further in view of Druz (3,442,269). Cohen and Skelton are as explained before. Although Cohen and Skelton fail to teach or suggest shocking the patient during the rising edge of an R-wave in the cardiac signal, attention is directed to Druz which teaches shocking the patient during the rising edge of an R-wave in the cardiac signal (Col. 6, lines 32-62). Shocking the patient in “synch” with the R-wave avoids the possibility of shocking the heart during its vulnerable period and thus inducing ventricular fibrillation. Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the apparatus of Cohen and Skelton with the additional step of

shocking the patient during the rising edge of an R-wave in the cardiac signal in order to avoid shocking the heart during its vulnerable period and inducing ventricular fibrillation.

***Allowable Subject Matter***

4. Claims 3-4, 6-9, 11 and 13-23 are allowed.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1-2, 5 10 and 12 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Mullen whose telephone number is (571) 272-4944. The examiner can normally be reached on M-F, 10:30 am-6:30 pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



kdm



Robert E. Pezzuto  
Supervisory Patent Examiner  
Art Unit 3762